

A New Castle City Board of Adjustment Hearing took place on April 27, 2011 at 7 p.m. in the City of New Castle's Town Hall.

Present: William J. Barthel, City Council President*
Daniel R. Losco, City Solicitor
David J. Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

*President Barthel is representing Mayor Donald Reese.

President Barthel called the meeting to order at 7 p.m. Roll call was taken.

President Barthel read the Notice of Public Hearing that states, "An application has been filed by St. Gabriel's Society, P.O. Box 27, New Castle, DE 19720, seeking a special exception under Section 230-18B.(3) of the zoning code for the existing private club located at 805 Tremont Street (also known as 802 Delaware Street), tax parcel number 21-114.00-299 and which is located in the Residential R-3 zoning district, and seeking a variance from the following setback requirements for the non-conforming pre-existing club building: 1. 5.2 feet (from the required 25 foot) for the rear yard setback, and; 2. 8.4 feet (from the required 20 foot) for the front yard setback. The applicant also seeks a variance to permit the replacement of a 6 foot tall fence within the front yard setback, as originally permitted by the Board of Adjustment by appeal number 1979-05.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Wednesday, April 27, 2011, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware."

An affidavit of publication was published in the News Journal on 4/12/11 and the New Castle Weekly on 4/13/11. Mr. Bergstrom testified the property has been properly posted (4/8/11).

(Mr. Armand Liberti was sworn in by Solicitor Losco.)

Clifford Hearn, attorney for the applicant, presented a brief history of St. Gabriel's to the Board. The structures at this location pre-exist the zoning code. Zoning changed to R-3 some time ago and since that time a second parcel of land was purchased. The applicant approached New Castle County to combine the parcels into one parcel of land. There is no proposal to include any new buildings or structures in the variance request. They would like to build a shed (which will not necessitate a variance) and change the chain link fence (6') to another style fence, thus requiring a variance. Because they are a private club in R-3 they can request a special exception.

The purpose of their request is to clean up their non-conforming use so that if it were ever destroyed (fire, etc.) they could establish a permanent property right to maintain the building as it current exists.

The applicant would like to "clean up" their property and cited the stoop/steps into the building and a wall that would both be in violation of today's zoning code. Additionally, they would like to address the brick oven on the property. Mr. Hearn noted the oven was on the application but does not appear on the notice. The applicant is considering putting in a shed but a variance would not be required.

Mr. Liberti said the club has been operating continuously without interruption. He has attempted to talk to neighbors without much success. Mr. Liberti was asked if any neighbors have visited the club to inquire about what they are doing. He responded 'no.' Mr. Bergstrom reported no letters of support or opposition has been received.

Mr. Athey noted the lot is odd shaped and he wanted to establish there are three (3) front yards which explains why 5.2 feet is being requested for the 'rear yard.'

The applicant has not decided which style fence to use but it will not be higher than 6' and will be black in color. No other exterior changes or structures are planned. The shed (20'X24') is on the plan as information only and will comply with the building code. It will replace two (2) wooden structures that were torn down to make the property more aesthetically pleasing.

President Barthel asked Mr. Liberti when they anticipate making a decision about the fence style. He needs to talk to their membership and show them various styles.

Solicitor Losco asked Mr. Bergstrom if the Planning Commission must make a recommendation on this matter, citing Section 230-57(D) (b) Special Exceptions and Procedures. Mr. Bergstrom does not believe a review by the Planning Commission would be required.

It is noted that no members of the public are present in opposition of the application while three (3) members of the public were in the audience in support of the application.

Solicitor Losco made a motion to close the public portion of the hearing. Mr. Athey seconded the motion which was then approved.

Solicitor Losco noted that under Section 230-57 the application must be in harmony with the purpose and intent of the chapter and in harmony with the neighborhood and surrounding area. The property has been incorporated into the area having pre-dated the current zoning code. No external changes are being made and the applicant wants the right to rebuild in the same location should something happen to this structure. The property is a non-conforming use and non-conforming uses should fade out over time. He does not believe a special exception should be denied.

Concerning variances, Solicitor Losco reviewed the terms of the Code.

That special conditions and circumstances exist which are peculiar to the land, structure, or buildings involved and which are not applicable to other lands, structures, or buildings in the same district. Solicitor Losco cited the pre-existing structures, fencing and location that make it a non-conforming use as the unique and peculiar circumstances that exist.

That literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code. He noted the applicant may not have the right to rebuild the existing buildings in case of fire or other casualty, and that this Board has granted the right to fence the property in the past.

Per Code, the special conditions and circumstances suffered by the applicant shall not result from the actions of the applicant. The structures in question were built pre-Code and the applicant has every right to leave them in place. They have not created the problem by building something in violation of the Code.

That granting the variance required will not convey on the applicant any special privilege that is denied by this Code to other lands, structures, or buildings in the same district. The applicant already has non-conforming use rights to maintain the structures where they are and wants to maintain this going forward. They are built into the character of the neighborhood and he offered that this is evidenced by the fact that no member of the public has written a letter or appeared tonight to show opposition.

For these reasons Solicitor Losco supports the application.

A motion was made by Solicitor Losco to approve the application as submitted with the exception that without proper notice about the barbeque pit issue the application cannot be granted legally. He recommended to fellow Board members that they approve the motion with a continuance, if requested by the applicant, to preserve that part of the application so it can be noticed and a hearing held for same.

Mr. Bergstrom said the barbeque pit is not occupied and he does not believe a variance is needed for it anyway. A building permit was required for safety purposes because it uses gas, but it is not an enclosed structure.

The applicant was asked if they want to request the continuance to return at a later date following notice to seek a variance for the BBQ pit versus withdrawing this portion of their application on the basis of comments made by Mr. Bergstrom. Mr. Hearn said the applicant is comfortable with not continuing the hearing following Mr. Bergstrom's comments.

Solicitor Losco made a motion to approve the application as submitted for the reasons stated, other than the variance request for the BBQ pit which is being withdrawn. Mr. Athey seconded the motion.

Mr. Athey and President Barthel voiced their approval of the motion citing the rationale already noted by Solicitor Losco.

The motion was approved unanimously.

The hearing was adjourned at 7:20 p.m.

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer